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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
  
Respondent/Plaintiff,  
  
v.  
  
DERRICK YOUNG,  
  
Petitioner/Defendant.

Case No. 2:13-cr-00149-KJD-CWH

**ORDER**

Presently before the Court is Petitioner’s Motion to Vacate, Set Aside, or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. § 2255 (## 159,164, 167). The Government filed a response (# 172) to which Petitioner replied (#173).

**I. Background**

On March 11, 2014, Petitioner pled guilty via a binding plea agreement to one count of armed bank robbery under 18 U.S.C. § 2113(a) and (d) and one count of use of a weapon in furtherance of a crime of violence under 18 U.S.C. § 924(c). On August 19, 2014, the Court sentenced Petitioner to 121 months— 37 months for his armed bank robbery conviction, and 84 months for his 924(c) conviction, to run consecutively. Petitioner had a total offense level of 19 and a criminal history category of III. But for the 924(c) sentencing enhancement, Petitioner

1 would not have received the additional 84-month consecutive sentence.

## 2 II. Analysis

3 A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was  
4 imposed in violation of the Constitution.” 28 U.S.C. § 2255(a). When a petitioner seeks relief  
5 pursuant to a right recognized by a United States Supreme Court decision, a one-year statute of  
6 limitations for seeking habeas relief runs from “the date on which the right asserted was initially  
7 recognized by the Supreme Court.” 28 U.S.C. § 2255(f)(3). The petitioner bears the burden of  
8 demonstrating that his petition is timely and that he is entitled to relief.

### 9 *A. Johnson v. United States Invalidates 18 U.S.C. § 924(c)(3)(B)*

10 As an initial matter, this Court finds that Johnson, in light of Dimaya, holds 924(c)’s  
11 residual clause unconstitutional. On June 26, 2015, the United States Supreme Court decided  
12 Johnson v. United States, finding the residual clause of the Armed Career Criminal Act  
13 (“ACCA”) violates the Constitution’s guarantee of due process. See Johnson v. U.S., 135 S. Ct.  
14 2551, 2557 (2015). On April 18, 2016, the Supreme Court held Johnson announced a new,  
15 substantive rule that has retroactive effect on cases on collateral review. See Welch v. U.S., 136  
16 S. Ct. 1257, 1268 (2016). On May 13, 2016, within the one-year statute of limitations, Petitioner  
17 filed the present motion based on the new, retroactively applicable rule announced in Johnson.

18 On April 17, 2018, the United States Supreme Court decided Sessions v. Dimaya,  
19 No. 15–1498, slip op. (Apr. 17, 2018), finding the residual clause of 18 U.S.C. § 16(b) to be  
20 unconstitutionally vague. The Supreme Court did so by expanding the logic of Johnson, stating  
21 § 16’s residual clause violates the Constitution’s guarantee of due process in the same way the  
22 ACCA’s residual clause did. Dimaya, No. 151498, slip op., at 8–9. Based on the Court’s  
23 willingness to expand the reach of Johnson to § 16(b) because it too shares the same fatal  
24

1 features the ACCA’s residual clause possesses, it follows that Johnson must logically apply to  
2 924(c), to invalidate its identical residual clause.

3 *B. Johnson Does Not Entitle Petitioner to Relief*

4 While Johnson invalidates § 924(c)(3)(B), Petitioner’s challenge to his conviction and  
5 sentence under 18 U.S.C. § 924(c) still fails because armed bank robbery<sup>1</sup> is a qualifying crime  
6 of violence under the constitutional 924(c)(3)(A) force clause. After Petitioner filed his present  
7 motion, the Ninth Circuit decided United States v. Watson, 881 F.3d 782 (9th Cir. 2018), which  
8 foreclosed all Johnson challenges regarding armed bank robbery under § 924(c). In Watson, the  
9 court was faced with the question of “whether armed bank robbery under federal law is a crime  
10 of violence under 18 U.S.C. § 924(c).” Watson, 881 F.3d at 783–84. In response to this question,  
11 the Ninth Circuit straightforwardly stated, “We hold that it is.” Id.

12 The Ninth Circuit elaborated, stating, “[B]ank robbery qualifies as a crime of violence  
13 because even its least violent form ‘requires at least an implicit threat to use the type of violent  
14 physical force necessary to meet the Johnson standard.’” Id. at 785 (quoting U.S. v. Gutierrez,  
15 876 F.3d 1254,1257 (9th Cir. 2017)). “Because bank robbery ‘by force and violence, or by  
16 intimidation’ is a crime of violence, so too is armed bank robbery. A conviction for armed bank  
17 robbery requires proof of all the elements of unarmed bank robbery.” Id. at 786 (quoting U.S. v.  
18 Coleman, 208 F.3d 786, 793 (9th Cir. 2000)). Thus, armed bank robbery is definitively a crime  
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21 <sup>1</sup> Defendant asserts his § 924(c) conviction was predicated on his conspiracy offense. See (#164, at 3). In the  
22 original indictment, there were only two counts: Count One being armed bank robbery, and Count Two being use of  
23 weapon in furtherance of a crime of violence (#2). The Superseding Indictment reflects the additional count of  
24 conspiracy to commit armed bank robbery, which resulted in a renumbering of the original two counts— conspiracy  
being Count One, armed bank robbery now being Count Two, and use of weapon in furtherance of a crime of violence  
being Count Three (#9). That the text of Count Three in the Superseding Indictment was not revised to reflect armed  
bank robbery’s new Count number does not render the statute of conviction ambiguous. There was never any  
suggestion that the predicate for the § 924(c) count was conspiracy, nor was there any confusion that the § 924(c)  
predicate was the substantive armed bank robbery.

1 of violence under 18 U.S.C. § 924(c), and Petitioner’s challenge to his corresponding conviction  
2 and imposed sentence fails.

3 *C. Certificate of Appealability*

4 In order for Petitioner to assert a right to appeal this final order, he must first warrant a  
5 certificate of appealability. 28 U.S.C. § 2253(b), (c)(1). To do so, Petitioner must make “a  
6 substantial showing of the denial of a constitutional right,” and “must demonstrate that  
7 reasonable jurists would find the district court’s assessment of the constitutional claims debatable  
8 or wrong.” Slack v. McDaniel, 529 U.S. 473, 483–84 (2000).

9 Petitioner has not demonstrated a substantial showing of the denial of a constitutional  
10 right, and reasonable jurists would not debate that Petitioner’s motion lacks merit. With regard to  
11 Defendant’s challenge to his conviction and sentence under 18 U.S.C. § 924(c), Watson is  
12 binding precedent on this Court, and directly rejects Defendant’s argument. Further, as the Ninth  
13 Circuit noted in Watson, “in so holding, [it] joined every other circuit to address the same  
14 question.” Id. at 785. Thus, this Court denies Petitioner a certificate of appealability.

15 III. Conclusion

16 Accordingly, IT IS HEREBY ORDERED that Petitioner’s Motion to Vacate, Set Aside,  
17 or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. § 2255 (##159, 164, 167) is  
18 **DENIED.**

19 Dated this 25th day of July, 2018.

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22 Kent J. Dawson  
23 United States District Judge  
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